

I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-14 as originally filed

Claims, Numbers

1-6 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

WRITTEN OPINION

International application No. PCT/B 02/05554

Novelty (N)

Claims

Inventive step (IS)

Claims 1-6

Industrial applicability (IA)

Claims

2. Citations and explanations

see separate sheet

1. Reference is made to the following documents:

- D1: US-A-2573750 (White J.W.) 6 November 1951
- D2: GB-A-397714 (California Fruit Growers Exchange) 31 August 1933
- D3: DE-A-3236762 (Weihofen J.) 5 April 1984
- D4: US-A-5260083 (Brain C.H., Gaither K.S., Muenz D.J.) 9 November 1993
- D5: FR-A-2700245 (Société Industrielle et agricole de Bretagne S.A.) 13 July 1994
- D6: FR-A-2638064 (Guillamot G.L.A.) 27 April 1990

2. This application has been found to have deficiencies that contravene the PCT requirements.

2.1. The following syntagms are considered by the substantive examiner to be merely descriptive features, thus having a non-limiting effect upon the scope of the affected claims: *shelf stable* (claim 1), *proper* (claim 1), *required* (claims 1, 5 and 6) and *high* (claim 4).

2.2. Claim 1 contains in its (v) step a phrasing that generates unclarities in the sense of Art. 6 PCT: " ...of step (*in vitro* fertilisation) ...". Moreover, the same unclarity persists in the associated part of the description (page 10 3rd §). The examination of said claim was based on the assumption that said step was the fourth one (step (iv)) as one can deduct it from page 11 of the description and the examples.

2.3. Claim 1 contains twice the temperature range of 27-40°C (step (ii)) related to the same process step. One of these references should be deleted to improve the readability of the affected claim and to make it compliant to Art. 6 PCT.

2.4. Finally, the unit of measure found in the independent claim 1 contravene the R.1 0.1 PCT as gm does not identify a valid measurement unit. However, the examination of said claim will continue by assuming gm was intended to mean grams.

3. Present application does not meet the requirement of Art. 33(1) PCT because the

subject-matter of claims 1, 3, 5, 6, 7, 8, 9 and 17 does not involve an inventive step in the sense of Art 33(3) PCT.

- 3.1. Document **D1**, which is considered to represent the most relevant state of the art to claim 6, discloses in example II a process for preparing a fruit spread that comprises the steps of: crushing raspberries, incubating the mashed fruits with 0.2% of a commercial pectin-destroying enzyme (value calculated by the substantive examiner from the values indicated in **D1**) at 37.78°C (value calculated by the substantive examiner from the values indicated in **D1**) for 5 hours, mixing with honey to 52.6% solids, evaporated under vacuum to 83°Brix.

The differences between the disclosure of **D1** and present invention are:

- ▶ 0.2% enzyme of unknown activity instead of 0.75-1.25% enzyme of a known activity (1590 u/ml PG and 17.7 u/g of PME); see §2.4
- ▶ 5 hours instead of 2-4 h
- ▶ the viscosity drop is not mentioned while a loss of 30-50% is claimed
- ▶ 52.6% solids instead of 30-45°Brix and
- ▶ 83°Brix instead of 68-70°Brix.

However, the parameters of the claimed step (v) are interrelated, their corroborated effect being the reduction of viscosity by 30-50%.

The effect(s) provided by the aforementioned differences is/are not mentioned in the application, nor the reasoning beneath the choice of claimed parameters.

Therefore, the objective problem to be solved is how to provide an alternative process parameters to the process of **D1** in order to obtain a fruit spread with no added sugar.

These alternative process parameters will become obvious to a person skilled in the art by following the trial and error procedure, without exercising the inventive skills. There is no indication to be found in the application about the choice of the pectinolytic enzyme and its activity. Therefore, any pectinolytic enzyme that would decrease the viscosity of the fruit pulp can be used by the person skilled in the art and its parameters (temperature, concentration, duration, pH etc.) are a

straightforward path to follow (see also the teaching of **D2** as a whole). Also, the 30-50% decrease of viscosity will become obvious to said person by simply juggling with the factors that affects the enzymic activity until the desired consistency is obtained. The choice of the last 2 parameters (30-45°Brix and 83°Brix, respectively) is not supported by an unexpected technical effect therefore the substantive examiner considers these two values as being merely arbitrary selections from customary ranges, thus a person skilled in the art would find them by following the trial and error procedure, without exercising the inventive skills especially as the advantages thus achieved can readily be foreseen.

As consequence, the subject-matter of the independent claim **6** lacks an inventive step in the sense of Art 33(3) PCT.

- 3.2.** As for the remaining claims **1-5**, the process of obtaining the fruit spread using concentrated fruit juice instead of sugar lacks an inventive step over the disclosure of **D1**, **D3-D6**.
- 3.3.** In the independent claim **1**, the purpose of the first four steps is to provide a depectinised (partially or completely) concentrated fruit juice in order to use it as a sweetener to the product of step (v) as to avoid the addition of sugar. **D1** is regarded to represent the closest prior art. It discloses a process in which the sweetener is honey (see §3.1). The difference between the disclosure of **D1** and claim **1** consists in the employed edulcorant (honey vs. concentrated fruit juice). Thus, the objective problem to be solved can be regarded as providing an alternative process in order to produce the fruit spread with no added sugar.

Using fruit juices concentrates as sweeteners is a well-known practice, see for instance **D3** (claim 1), **D4** (col. 3 lines 12-19), **D5** (claim 4) and **D6** (p. 2 line 22 - p. 4 line 11). Although a person skilled in the art would know what sugar replacers can be used in fruit spreads, **D6** indicates explicitly the possible use of honey or fruit juice concentrate. Thus, the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, the fruit juice concentrate, as merely one of several straightforward possibilities, in order to solve the problem posed.

As for the treatment that said fruit juice concentrate had undergone (steps (i)-(iv)), this is regarded to solve the same problem as indicated in §3.1.

As consequence, the subject-matter of the independent claim 1 lacks an inventive step in the sense of Art 33(3) PCT.

- 3.4. Dependent claims 2-5 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, as their features are obvious and/or anticipated by aforementioned documents.
4. The applicant is requested to file new claims which take account of the above comments.

To meet the requirements of Rule 5.1(a)(ii) PCT, the documents **D1-D6** should be identified in the description and its relevant contents should be indicated. The applicant should ensure that it is clear from the description which features of the subject-matter of independent claim 1 are known from those documents.

The reference on page 9 lines 5-7 could not be found. The applicant is requested to supply a copy of said document(s) along to the reply.

The applicant has not provided reasons why the claim should not be in the two-part form.

The applicant is requested to file amendments by way of replacement pages in the manner stipulated by Rule 66.8(a) PCT. In particular, fair copies of the amendments should be filed preferably in triplicate.

Moreover, the applicant's attention is drawn to the fact that, as a consequence of Rule 66.8(a) PCT the examiner is not permitted to carry out any amendments under the PCT procedure, however minor these may be.

In order to facilitate the examination of the conformity of the amended application

**WRITTEN OPINION
SEPARATE SHEET**

International application No. PCT/IB 02/05554

with the requirements of Article 34(2)(b) PCT, the applicant is requested to clearly identify the amendments carried out, no matter whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based (see also Rule 66.8(a) PCT).

If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.

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